

## SENATE BILL No. 309

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 30-4-3; IC 32-17-9-6.

**Synopsis:** Transfer on death registration and fiduciaries. Makes an investment management or a custody account with a trust company or trust division of a bank with trust powers subject to the uniform act on transfer on death securities. Allows a trust company or trust department of a bank acting in a fiduciary capacity to purchase ancillary services and products through or directly from the trust company or trust department of a bank.

**Effective:** July 1, 2004.

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January 12, 2004, read first time and referred to Committee on Insurance and Financial Institutions.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## SENATE BILL No. 309

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A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 30-4-3-7 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) Unless the terms of the trust  
3 provide otherwise **or the transaction is allowed under section 7.5 of**  
4 **this chapter**, the trustee has a duty:

- 5       (1) not to loan funds to ~~himself the trustee~~ or an affiliate;  
6       (2) not to purchase or participate in the purchase of trust property  
7       from the trust for the trustee's own or an affiliate's account;  
8       (3) not to sell or participate in the sale of the trustee's own or an  
9       affiliate's property to the trust; or  
10       (4) if a corporate trustee, not to purchase for or retain in the trust  
11       its own or a parent or subsidiary corporation's stock, bonds, or  
12       other capital securities. However, the trustee may retain such  
13       securities already held in trusts created prior to September 2,  
14       1971.

15       (b) Unless the terms of the trust provide otherwise, a corporate  
16       trustee may invest in, purchase for, or retain in the trust its own or an  
17       affiliate's obligations, including savings accounts and certificates of

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deposit, without the investment, purchase, or retention constituting a conflict of interest under section 5 of this chapter.

(c) Unless the terms of the trust provide otherwise, a corporate trustee does not violate subsection (a) by investing in, purchasing for, or retaining in the trust its own or an affiliate's obligations, including savings accounts and certificates of deposit, if the payment of each obligation is fully insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or any insurer approved by the department of financial institutions under IC 28-7-1-31.5.

(d) If the terms of the trust permit the trustee to deal with a beneficiary for the trustee's own account, the trustee has a duty to deal fairly with and to disclose to the beneficiary all material facts related to the transaction which the trustee knows or should know. **A trust company or trust department of a bank that makes a purchase or sale under section 7.5 of this chapter satisfies this subsection by making an annual disclosure as required by section 7.5(d) of this chapter.**

(e) Unless the terms of the trust provide otherwise, the trustee may sell, exchange, or participate in the sale or exchange of trust property from one (1) trust to ~~himself the trustee~~ as trustee of another trust, provided the sale or exchange is fair and reasonable with respect to the beneficiaries of both trusts and the trustee discloses to the beneficiaries of both trusts all material facts related to the sale or exchange which the trustee knows or should know. **A trust company or trust department of a bank that makes a purchase or sale under section 7.5 of this chapter satisfies this subsection by making an annual disclosure as required by section 7.5(d) of this chapter.**

SECTION 2. IC 30-4-3-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 7.5. (a) This section applies to a trust company or a trust department of a bank that:**

**(1) is organized, is chartered, or holds an authorization certificate under the laws of a state or of the United States:**

**(A) that authorizes the making of loans and the receiving of deposits, including a savings, share, certificate, or deposit account; and**

**(B) is subject to supervision by an official or agency of a state or of the United States; and**

**(2) acts in a fiduciary capacity after June 30, 2004, for a trust created before, on, or after June 30, 2004.**

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(b) A trust company or trust department of a bank may purchase or sell:

(1) any service or product, including:

(A) insurance; or

(B) securities:

(i) at the time of the initial offering; or

(ii) after the initial offering;

underwritten or otherwise distributed by the trust company, trust department of a bank, or by an affiliate; and

(2) through, directly from, or to:

(A) the trust company;

(B) the bank at which the trust department is located;

(C) an affiliate of the trust company or bank at which the trust department is located; or

(D) a syndicate or selling group that includes:

(i) the trust company;

(ii) the bank at which the trust department is located; or

(iii) an affiliate of the trust company or bank at which the trust department is located;

if the requirements of subsection (c) are satisfied.

(c) A trust company or trust department of a bank may make a purchase or sale under subsection (b) if:

(1) the purchase or sale is otherwise prudent under IC 30-4-3.5; and

(2) the consideration for the service or product:

(A) is reasonable and is not prohibited by the instrument governing the fiduciary relationship; and

(B) may be in addition to the consideration the trust company or trust department of a bank is otherwise entitled to receive from the fiduciary account.

(d) A trust company or trust department of a bank that is subject to this section shall disclose not later than December 31 of each year to all persons entitled to receive statements of account activity any purchase or sale of services or products allowed under this section that was made by the trust company or trust department of a bank during the year.

(e) A disclosure under subsection (d) shall be given electronically or in writing and must include the following:

(1) Any capacities in which the trust company, trust department of a bank, or affiliate acts for:

(A) the issuer of the securities; or

(B) the provider of the products or services.

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1           **(2) The fact that the trust company, trust department of a**  
 2           **bank, or affiliate may have an interest in the products or**  
 3           **services.**

4           **(f) The actions of a trust company or the trust department of a**  
 5           **bank under this section do not constitute a conflict of interest.**

6           SECTION 3. IC 32-17-9-6, AS ADDED BY P.L.2-2002, SECTION  
 7           2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
 8           2004]: Sec. 6. As used in this chapter, "security account" means:

9           (1) a reinvestment account associated with a security, a securities  
 10           account with a broker, a cash balance in a brokerage account,  
 11           cash, interest, earnings, or dividends earned or declared on a  
 12           security in an account, a reinvestment account, or a brokerage  
 13           account, whether or not credited to the account before the owner's  
 14           death; or

15           **(2) an investment management or custody account with a**  
 16           **trust company or a trust department of a bank with trust**  
 17           **powers, including the securities in the account, a cash balance**  
 18           **in the account, cash, cash equivalents, interest, earnings, or**  
 19           **dividends earned or declared on a security in the account,**  
 20           **whether or not credited to the account before the owner's**  
 21           **death; or**

22           **(3) a cash balance or other property held for or due to the owner**  
 23           **of a security as a replacement for or product of an account**  
 24           **security, regardless of whether the cash was credited to the**  
 25           **account before the owner's death.**

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